

**Letter of Findings: 09-1014P
Sales and Use Tax
For the Tax Year 2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests abatement of a negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation that failed to pay the full amount of Indiana sales tax due for the 2008 tax year. As a result of the Department of Revenue ("Department")'s normal and customary administrative procedures, Taxpayer paid the additional sales tax due more than a year later.

The Department subsequently issued a proposed assessment to recover interest, administrative costs, and a ten percent negligence penalty associated with taxpayer's outstanding 2008 sales tax liability. Taxpayer paid the additional amounts assessed, but protested assessment of the negligence penalty.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department also refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#):

The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and was subject to a penalty under IC § 6-8.1-10-2.1(a). Within its protest, Taxpayer concedes that it did not timely pay the full amount of sales tax due for its 2008 filing. Although taxpayer ultimately paid the difference due, taxpayer paid that amount more than a year later. In addition, the Department's review of taxpayer's history indicates that taxpayer has failed to timely file income tax withholding returns and remit withholding tax on multiple occasions for the 2009 tax year.

Under IC § 6-8.1-5-1(c), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has not affirmatively established that its failure to remit the full amount of sales tax due and its subsequent failure to pay the difference until more than a year after the liability's due date was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is respectfully denied.

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